RE: ACLU Public Records Request - 2021-MSP-4642

Paquette, Keith (POL) <keith.paquette@state.ma.us>

Fri 7/8/2022 3:48 PM

To: Emiliano Falcon-Morano <efalcon@aclum.org>;Kade Crockford <kcrockford@aclum.org>

Good afternoon Emiliano,

I am providing you and Kade with the Department's response to your request and the responsive records via the OneDrive link below. Please be advised that I will be out of the office until Monday July 18, 2022. If you submit any follow up requests, they will not be received by me until Monday July 18th. If you have any further follow up public record requests, please submit the request online following the procedures set forth on the MSP website at https://www.mass.gov/how-to/submit-a-public-records-request-to-the-massachusetts-state-police

The following is the Department's formal response to your request:

On May 24, 2022, the Massachusetts Department of State Police ("Department") received your request for:

- All records pertaining to the use of drones in exigent circumstances, per the language of sections 1.II and 3.II of the policy titled "MSP SOP – Uncrewed Aircraft Systems – 2021-IMT-001 06/2021;" and
- All records pertaining to the use of drones and UAVs, including logs, notes, police reports, incident reports, intelligence reports, and any other record that shows who operated or used drones, how and when, and for what reasons. This was point number three of the original request. We want all the records created since the MSP sent the original response on January 20.

On June 8, 2022, pursuant to our email correspondence (and prior conversation with your colleague) you agreed to narrow down your request as follows:

1. Emails from May 29, 2020 to June 15 2020 based upon the following two searches below.
    a. 2 Searches described below:
        i. Search terms #1 "drone", "unmanned aerial vehicle", or "UAV."
        ii. Search terms #2 "drone" or "unmanned aerial vehicle" or "UAV"; AND "search and rescue" or "tactical mission" or "crash" or "accident" or "crime scene" or "fire" or "hazmat" or "natural disaster" (this is based upon the exigent circumstances definition in the policy).
2. Reports (no attachments just the report and you can follow up for specific attachments you are in interested in) and logs from May 29, 2020 to June 15, 2020 (covers both RAMS and ACISS systems described below).
    a. 2 Searches described above.
3. The Incident Management Assistance Team (IMAT) in the Unmanned Aerial Section of the Department possesses flight data logs relating to drones. Flights were searched from January 20, 2022 to May 24, 2022 that resulted in 129 flights. Expected to be 45 reports. 45 reports and the flight logs (no attachments just the report and you can follow up for specific attachments you are interested in) from January 20, 2022 to May 24, 2022.

4. Exclude any Collision Accident Reconstruction Section (CARS) materials for all three items identified above (my understanding is that you are not interested in the materials dealing with fatal or serious bodily injury motor vehicle accident investigations).

In response to request #1 (emails), the Department has located thirty-seven (37) emails with attachments that have been provided to you. The Department identified the redactions by code (i.e. (c) privacy, (n) security, etc.) in each record. The Department is setting forth the following list of redactions it has made in the records:

- H4 Tunnel Inspection Email:
    - Link video "Culvert inspection H4 05-05-2020" mp4 was redacted and removed pursuant to G.L. c. 4, §7, cl. 26(n), the security exemption of the Public Records Law, which exempts from disclosure records "including but not limited to blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety." People for the Ethical Treatment of Animals, Inc. vs. Department of Agricultural Resources & another, 477 Mass. 280 (2017), addressed this exemption. In this decision, the Court laid out a two-prong analysis to determine if a record was properly withheld under this exemption. The first prong of analysis considers, "whether, and to what degree, the record sought resembles the records listed as examples in the statute" and the second prong of analysis requires "the factual and contextual support for the proposition that disclosure of the record is "likely to jeopardize public safety." PETA, 477 Mass. at 290. The Department asserts that the video depicts in detail the area directly below the H4 State Police Barracks. This video is considered a blueprint, plan or schematic drawings, that relate to the layout and structural elements of the barracks. As such, disclosing this video could jeopardize public safety by provide criminals with information to strategize a plan of attack on persons and infrastructure within the Commonwealth. Therefore, in the reasonable judgment of the Department, disclosure of the video is likely to jeopardize public safety.
    - The Department redacted a personal telephone number in the email pursuant to G.L. c. 4, §7, cl. 26 (c), the privacy exemption. Pursuant to the privacy exemption, the Department can withhold "personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; provided, however, that this subclause shall not apply to records related to a law enforcement misconduct investigation." M.G.L. c. 4, §7, cl. 26 (c).

- FW Current Ops Email:

    - The Department redacted the operational plan for the 85th Recruit Training Troop (RTT) that includes a detailed description of the safety and security operations during the graduation. The operational plan was redacted pursuant to G.L. c. 4, §7, cl. 26(n), the security exemption of the Public Records Law. The Department asserts that the operational plan is a plan or procedure that relates to the security measures, emergency preparedness, and threat or vulnerability assessments of persons or buildings within the Commonwealth. As such, disclosing this plan could jeopardize public safety by providing criminals with information to strategize a plan of attack on persons and infrastructure within the Commonwealth. Therefore, in the reasonable judgment of the Department, disclosure of the video is likely to jeopardize public safety.

- IMAT UAS Activity 5.29 thru 6.4:
    - The Department redacted a personal telephone number in the email pursuant to G.L.

c. 4, §7, cl. 26 (c), the privacy exemption.
    - The Department redacted the location that the drone operator was staged pursuant to G.L. c. 4, §7, cl. 26 (f), the investigatory exemption. G.L. c. 4, §7, cl. 26 (f) exempts from public disclosure "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." The policy considerations of the investigatory exemption are well settled. They include the "avoidance of premature disclosure of the Commonwealth's case prior to trial, the prevention of the disclosure of confidential investigative techniques, procedures, or sources of information, the encouragement of individual citizens to come forward and speak freely with police concerning matters under investigation, and the creation of initiative that police officers might be completely candid in recording their observations, hypotheses and interim conclusions. See, Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976). The Department asserts that providing the staging location of the drone operator is a confidential investigative techniques or procedure, which would prejudice the possibility of effective law enforcement if disclosed. It is not in the public's interest to release this information, as such release could potentially inhibit drone operators from using confidential locations in the future during the same or similar missions Therefore, the records you seek are not available at this time pursuant to G.L. c. 4, §7, cl. 26 (f).
    - The Department additionally redacted the location that the drone operator was staged pursuant to G.L. c. 4, §7, cl. 26(n), for the same reasons described below for the situation report 6.6.20 emails.
- Situation Report 6.6.20 email, Updated Situation Report for Saturday 6-6-2020 email, and FW: Updated Situation Report for Saturday 6-6-2020 (3 total emails):
    - The Department withheld the attached situation reports pursuant to G.L. c. 4, §7, cl. 26(n), the security exemption of the Public Records Law. The situation report details the amount of MSP personnel assigned to the protests, where the members were staged, and what resources were utilized.
    - The Department redacted the number of members called into a specific protest and the location of where the specific number of members would be staged pursuant to G.L. c. 4, §7, cl. 26(n). The location of where the specific members would be located is additionally being redacted pursuant to the investigatory exemption. G.L. c. 4, §7, cl. 26 (f), for the same reasons described above.
    - The Department asserts that the information described above is a plan or procedure that relates to the security measures, emergency preparedness, and threat or vulnerability assessments of persons or buildings within the Commonwealth. As such, disclosing this plan could jeopardize public safety by providing criminals with information to strategize a plan of attack on persons and infrastructure within the Commonwealth. Therefore, in the reasonable judgment of the Department, disclosure of the video is likely to jeopardize public safety.
- DHS DAJ Daily Report 6-4-20; DHS DAJ Daily Report June 7, 2020 Email; DHS DAJ Daily Report June 11, 2020 Email; and DHS DAJ Daily Report June 12, 2020 email (4 total emails):
    - The Department redacted the location the drone operator was staged pursuant to G.L. c. 4, §7, cl. 26 (f), the investigatory exemption for the same reasons described above for IMAT UAS Activity 5.29 thru 6.4 email, and pursuant to G.L. c. 4, §7, cl. 26(n), for the same reasons described above for the situation report 6.6.20 emails.
    - The Department redacted the entire Department of Homeland Security roster for the Department and their activity beyond this request (drone activity) pursuant to G.L. c. 4, §7, cl. 26(n), for the same reasons described above for the situation report 6.6.20 emails.
- ACISS Alert 2020-IMT-23 (2 emails), ACISS Alert Report 2020-IMT-23, ACISS Alert 2020-IMT-25 (2 emails), and ACISS Alert 2020-IMT-27- (6 total emails)):
    - The Department redacted the location the drone operator was staged pursuant to G.L. c. 4, §7, cl. 26 (f), the investigatory exemption for the same reasons described above for IMAT UAS Activity 5.29 thru 6.4 email, and pursuant to G.L. c. 4, §7, cl. 26(n), for

the same reasons described above for the situation report 6.6.20 emails.

- Agawam Request for MSP Assistance 6.10.20:
  - The Department redacted a personal telephone number in the email pursuant to G.L. c. 4, §7, cl. 26 (c), the privacy exemption.
  - The Department redacted the location the drone operator was staged pursuant to G.L. c. 4, §7, cl. 26 (f), the investigatory exemption for the same reasons described above for IMAT UAS Activity 5.29 thru 6.4 email, and pursuant to G.L. c. 4, §7, cl. 26(n), for the same reasons described above for the situation report 6.6.20 emails.
- FW_ Drone Request 6.10.20 Email:
  - The Department redacted a personal telephone number in the email pursuant to G.L. c. 4, §7, cl. 26 (c), the privacy exemption.
  - The Department redacted the number of members assigned to the protest pursuant to G.L. c. 4, §7, cl. 26(n), for the same reasons described above for the situation report 6.6.20 emails.
- RE_ Agawam-Request for MSP Assistance 6.10.20:
  - The Department redacted a personal telephone number in the email pursuant to G.L. c. 4, §7, cl. 26 (c), the privacy exemption.
- Fwd_ Agawam Drone Feed:
  - The Department redacted the meeting name and password for the zoom feed pursuant to G.L. c. 4, §7, cl. 26 (c), the privacy exemption.
- IMAT UAS Activity 6/5 thru 6/11/2020:
  - The Department redacted information relating to the security of an executive branch government official and the location of a drone detection system pursuant to G.L. c. 4, §7, cl. 26(n), for the same reasons described above for the situation report 6.6.20 emails.
  - The Department redacted a personal telephone number in the email pursuant to G.L. c. 4, §7, cl. 26 (c), the privacy exemption.
- Name Redacted- Trafficking Cocaine email:
  - The Department redacted a criminal defendant's name pursuant to G. L. c. 4, § 7 cl. 26(a), which exempts from public disclosure any records that are "specifically or by necessary implication exempted from disclosure by statute." In this instance, the defendant's name associated with a criminal prosecution falls within this exemption since releasing the requested information would violate G.L. c. 6, § 172, the Criminal Offender Record Information ("CORI") statute. General Laws c. 6, § 172 prohibits the dissemination of CORI information for which G.L. c. 6, §167 defines as "records and data in any communicable form compiled by a criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings…sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to information recorded in criminal proceedings that are not dismissed before arraignment."
  - The Department redacted a personal telephone number in the email pursuant to G.L. c. 4, §7, cl. 26 (c), the privacy exemption.
- Common Drone 6-7-20 Email:
  - The Department redacted the location the drone operator was staged pursuant to G.L. c. 4, §7, cl. 26 (f), the investigatory exemption for the same reasons described above for IMAT UAS Activity 5.29 thru 6.4 email, and pursuant to G.L. c. 4, §7, cl. 26(n), for the same reasons described above for the situation report 6.6.20 emails.

In response to request #2 (reports and logs from the ACISS and RAMS systems from May 29, 2020 to June 15, 2020), the Department has located eight (8) responsive reports (2020-IMT-23, 25, 26, 28, 29, 30, 31, and 34) that has been provided to you. The Department redacted the following information in six (6) of the reports

- The Department redacted the location the drone operator or members were staged pursuant to G.L. c. 4, §7, cl. 26 (f), the investigatory exemption for the same reasons described above for IMAT UAS Activity 5.29 thru 6.4 email, and pursuant to G.L. c. 4, §7, cl. 26(n), for the same reasons described above for the situation report 6.6.20 emails.
- The Department additionally redacted the number of members assigned to the protest from

the Department pursuant to G.L. c. 4, §7, cl. 26(n), for the same reasons described above for the situation report 6.6.20 emails.

In response to request #3 (flight logs and 45 reports referenced in the logs from January 20, 2022 to May 24, 2022), the Department has provided you with the flight logs in an excel spreadsheet and PDF document, and thirty-eight (38) reports. The Department withheld in its entirety six (6) reports and one (1) log for the reasons described below.

The Department withheld the following reports (6) and log (1): 2022-IMT-2; 2022-IMT-8; 2022-IMT-25; 2022-IMT-40; 2022-IMT-49; 2022-0CX-003337 Arrest Report; and 2022-0C2-003110 administrative journal extract (log). The Department is denying your request to the records pursuant to G.L. c. 4, §7, cl. 26 (f), as the matters remains the subject of an active on-going prosecution or investigation as follows:

- 2022-IMT-2 report- an identifiable person is being prosecuted in Falmouth District Court by the Cape & Island District Attorney's Office.
- 2022-IMT-8 report- two identifiable persons are being prosecuted in Norfolk Superior Court by the Norfolk District Attorney's Office.
- 2022-IMT-25 report- matter remains the subject of an on-going homicide investigation in Worcester for the death Jazmin Rosario.
- 2022-IMT-40 report- identifiable person is being prosecuted in Haverhill District Court by the Essex District Attorney's Office.
- 2022-IMT-49 report and 2022-0C2-003110 administrative journal extract (log)- identifiable person is being prosecuted in Uxbridge District Court by the Worcester District Attorney's Office.
- 2022-0CX-003337 Arrest Report- identifiable person is being prosecuted in Westborough District Court by the Worcester District Attorney's Office.

G.L. c. 4, §7, cl. 26 (f) exempts from public disclosure "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." The policy considerations of the investigatory exemption are well settled. They include the "avoidance of premature disclosure of the Commonwealth's case prior to trial, the prevention of the disclosure of confidential investigative techniques, procedures, or sources of information, the encouragement of individual citizens to come forward and speak freely with police concerning matters under investigation, and the creation of initiative that police officers might be completely candid in recording their observations, hypotheses and interim conclusions. See, Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976). The Department asserts that providing these materials to you would prematurely disclose the Commonwealth's case prior to trial or the investigation prior to its conclusion, which would prejudice the possibility of effective law enforcement. It is not in the public's interest to release this information, as such release could potentially taint any potential jury pool or effect the investigator's efforts in an on-going investigation. Therefore, the records you seek are not available at this time pursuant to G.L. c. 4, §7, cl. 26 (f).

With respect to the thirty-eight (38) reports provided to you, the following redactions were made in sixteen (16) of the reports:

- 2022-IMT-6 and 2022-IMT-9 reports- redacted an identifiable person's medical condition as medical information pursuant to G.L. c. 4, §7, cl. 26 (c).
- 2022-IMT-10 report- redacted as a matter of privacy pursuant to G.L. c. 4, §7, cl. 26 (c), identifying information relating to the motor vehicle passenger and operator, such as the vehicle registration number, vehicle make and model, and a description of the operator and passenger, as such incident is related to the criminal misconduct of a private individual.

Additionally, redacted criminal record offender record information (CORI) relating to an arrest of the suspect pursuant to G. L. c. 4, § 7 cl. 26(a) and G.L. c. 6, § 172, the Criminal Offender Record Information ("CORI") statute, as described above in the Name Redacted- Trafficking Cocaine email.

- 2022-IMT-11 report – redacted the address of a juvenile and location in the vicinity to the juvenile's address pursuant to G. L. c. 4, § 7 cl. 26(a), which exempts from public disclosure records which are specifically or by necessary implication exempt from public disclosure. In this instance, the Legislature has, by clear implication, exempted records pertaining to minor children from public disclosure. See G.L. c. 119, §§1-84; G.L. c. 71, §34D; G.L. c. 276, §100B; G.L. c. 120, §21; and G.L. c. 209A, §8. The Department additionally redacted mental health information pursuant to G.L. c. 4, §7, cl. 26 (c).
- 2022-IMT-20 report- the Department redacted witnesses name and identifying information, such as the witness's relationship to a party pursuant to G.L. c. 4, §7, cl. 26 (f), the investigation exemption. The Department redacted a witness's name and identifying information to preserve the anonymity of voluntary witnesses, and to encourage witnesses from coming forward in the future and speaking freely to police concerning matters under investigation. The Department redacted a date of birth as a matter of privacy pursuant to G.L. c. 4, §7, cl. 26 (c). The Department redacted information relating to the investigation of the missing person that is not publicly available such as a description of clothing and who it may have belonged too, pursuant to the G.L. c. 4, §7, cl. 26 (f), investigatory exemption. This matter remains the subject of an on-going investigation by the Northwestern District Attorney's Office and is being redacted for the reasons described above for withholding the reports.
- 2022-IMT-26 report- the Department redacted the private nature of the surrounding circumstances of the reason the subject of the report went missing, the missing persons address, date of birth, and cell phone number, as a matter of personal privacy pursuant to G.L. c. 4, §7, cl. 26 (c).
- 2022-IMT-29 report- the Department redacted the suspects name and address, motor vehicle registration number, biographical information, license number, and information regarding the suspects criminal history; statements relating to mental health, and date of birth, as a matter of personal privacy pursuant to G.L. c. 4, §7, cl. 26 (c). The Department redacted the motor vehicle registration number of a witness that could lead to his/her identity pursuant to G.L. c. 4, §7, cl. 26 (f), investigatory exemption, for the same reasons describe above for 2022-IMT-20 report.
- 2022-IMT-36 report- The Department redacted the address associated with missing person as a matter of personal privacy, and medical information, pursuant to G.L. c. 4, §7, cl. 26 (c).
- 2022-IMT-41 report- the Department redacted the suspects name and date of birth as a matter of personal privacy pursuant to G.L. c. 4, §7, cl. 26 (c).
- 2022-IMT-47 report- the Department redacted the missing persons address as a matter of privacy pursuant to G.L. c. 4, §7, cl. 26 (c).
- 2022-IMT-50 report- the Department redacted the missing persons address and date of birth as a matter of privacy pursuant to G.L. c. 4, §7, cl. 26 (c).
- 2022-IMT-54 report- the Department redacted the missing persons address as a matter of privacy, and medical condition pursuant to G.L. c. 4, §7, cl. 26 (c).
- 2022-IMT-56 report- the Department redacted the missing persons address as a matter of privacy, and mental health condition pursuant to G.L. c. 4, §7, cl. 26 (c).
- 2022-IMT-57 report- the Department redacted the subject of the reports address as a matter of privacy pursuant to G.L. c. 4, §7, cl. 26 (c).
- 2022-IMT-58 report-the Department redacted the staging area of search associated with potential address of juvenile as a matter of privacy pursuant to G.L. c. 4, §7, cl. 26 (c).
- 2022-IMT-59 report- the Department redacted mental health information and statements related to mental health, date of birth, statement related to a familial relationship, as a matter of privacy pursuant to G.L. c. 4, §7, cl. 26 (c). The Department further redacted a witness's identification pursuant to G.L. c. 4, §7, cl. 26 (f), investigatory exemption, for the same reasons describe above for 2022-IMT-20 report.

The above-described records are being shared with you through the following OneDrive link:

https://massgov-my.sharepoint.com/:f:/g/personal/keith_paquette_pol_state_ma_us/Eo9lkaqk9CBGuyEgLXpSy00BmXteBboNEN_zeIyD1C5K0w?e=BViMdu
If you wish to challenge any aspect of this response, you may appeal to the Supervisor of Public Records following the procedure set forth in 950 C.M.R. 32.08, a copy of which is available at http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-source/cmr/. You may also file a civil action in accordance with M.G.L. c. 66, § 10A.

Sincerely,

Keith A. Paquette
Staff Legal Counsel
Massachusetts State Police
470 Worcester Road
Framingham, MA 01702
Tel:(508)-820-2348

From: Paquette, Keith (POL)
Sent: Wednesday, June 8, 2022 2:43 PM
To: Emiliano Falcon-Morano <efalcon@aclum.org>
Cc: Kade Crockford <kcrockford@aclum.org>
Subject: RE: ACLU Public Records Request - 2021-MSP-4642

Thank you for agreeing to narrow down your request. I am going to submit the requests within the Department and go from there.

Keith A. Paquette
Staff Legal Counsel
Massachusetts State Police
470 Worcester Road
Framingham, MA 01702
Tel:(508)-820-2348

From: Emiliano Falcon-Morano <efalcon@aclum.org>
Sent: Wednesday, June 8, 2022 2:40 PM
To: Paquette, Keith (POL) <Keith.Paquette@pol.state.ma.us>
Cc: Kade Crockford <kcrockford@aclum.org>
Subject: RE: ACLU Public Records Request - 2021-MSP-4642

Hi Keith,

This looks good to us.

Thanks!

Emiliano

From: Paquette, Keith (POL) <keith.paquette@state.ma.us>
Sent: Wednesday, June 8, 2022 2:19 PM
To: Emiliano Falcon-Morano <efalcon@aclum.org>
Cc: Kade Crockford <kcrockford@aclum.org>
Subject: RE: ACLU Public Records Request - 2021-MSP-4642

Hi Emiliano,

How about the following proposed narrowed down request (please be advised this is all subject to the public records law):

1. Emails from May 29, 2020 to June 15 2020.
    a. 2 Searches described below:
        i. Search terms #1 “drone”, “unmanned aerial vehicle”, or “UAV.” The search resulted in 35,397 items.
        ii. Search terms #2 “drone” or “unmanned aerial vehicle” or “UAV”; AND “search and rescue” or “tactical mission” or “crash” or “accident” or “crime scene” or “fire” or “hazmat” or “natural disaster” (this is based upon the exigent circumstances definition in the policy).

2. Reports (no attachments just the report and you can follow up for specific attachments you are in interested in) and logs from May 29, 2020 to June 15, 2020 (covers both RAMS and ACISS systems described below).
    a. 2 Searches described above.

3. 45 reports described below and the flight logs (no attachments just the report and you can follow up for specific attachments you are interested in) from January 20, 2022 to May 24, 2022.

4. Exclude any Collision Accident Reconstruction Section (CARS) materials for all three items identified above (my understanding is that you would not be interested in the materials dealing with fatal or serious bodily injury motor vehicle accident investigations).

This was your original request:

- All records pertaining to the use of drones in exigent circumstances, per the language of sections 1.II and 3.II of the policy titled "MSP SOP – Uncrewed Aircraft Systems – 2021-IMT-001 06/2021;" and
- All records pertaining to the use of drones and UAVs, including logs, notes, police reports, incident reports, intelligence reports, and any other record that shows who operated or used drones, how and when, and for what reasons. This was point number three of the original request. We want all the records created since the MSP sent the original response on January 20.

There was some confusion with some dates and times below. It is easier to see everything at once.

Please let me know if this is agreeable.

Keith A. Paquette
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